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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,866	09/12/2000	Scott J. Jones	GOLDENH.001C1	2541
20995	7590	06/15/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/659,866

Applicant(s)

JONES ET AL.

Examiner

Natalie A. Pass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20/12/04, 25/1/05, and 10/2/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Notice to Applicant

1. This communication is in response to the responses filed 20 December 2004, 25 January 2005, and 10 February 2005. Claims 20-29 have been newly added. Claim 1 has been cancelled. Claims 2-29 remain pending. Applicant's Affidavit filed 20 December 2004 has been entered and considered.

Claim Rejections - 35 USC § 112

2. The rejection of claims 7, 12, and 17 under 35 U.S.C. 112, second paragraph is hereby withdrawn due to the response filed 20 December 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 2 and 9 are rejected under 35 U.S.C. 102(a) as being anticipated by Aeromed (“www.aeromed-software.com,” February 5, 1998).

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(A) As per claims 2 and 9, Aeromed teaches a computerized system for managing airborne transportation of a patient comprising:

a first module comprising instructions for dispatching an aircraft carrying an airborne emergency transport crew to a patient site (Aeromed; pages 4 and 5);

a second module comprising instructions for generating a calculated flight path to the patient site (Aeromed; pages 4 and 5); and

a third module comprising instructions for tracking the actual flight path of the vehicle and determining whether the actual flight path varies from the calculated flight path and for tracking flight coordinates of the aircraft (Aeromed; pages 4 and 5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-5, 10, 15, and 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathanson et al. (5,122,959) in view of Schriewer (Schriewer, Scott, "Airborne Ambulance Saves Precious Time," Tulsa World, May 22, 1996, pages 1-2).

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(A) As per claim 2, Nathanson teaches a computerized system for managing transportation of a patient comprising:

a first module comprising instructions for dispatching a vehicle carrying an emergency transport crew to a patient site (Nathanson; Abstract, column 4, lines 21-27, column 16, line 42-column 18, line 5, and column 21, lines 6-31);

a second module comprising instructions for generating a calculated path to the patient site (Nathanson; column 18, lines 8-28); and

a third module comprising instructions for tracking the actual path of the vehicle and determining whether the actual path varies from the calculated path (Nathanson; column 19, line 43 to column 20, line 2).

Nathanson fails to expressly teach the vehicle being an aircraft carrying an emergency transport crew to a patient site.

However, this feature is old and well known in the art, as evidenced by Schriewer's teachings with regards to a computerized system for managing airborne transportation for an aircraft carrying airborne emergency transport crew to a patient site (Schriewer; page 1, paragraph 1).

It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the system taught by Nathanson with Schriewer's teaching with regards to these limitations, with the motivation of "transporting critical-care patients or accident victims ... [where] ... time is of the essence" (Schriewer; page 1, paragraph 1, lines 5-6).

(B) As per claims 3-5, Nathanson fails to expressly teach wherein the vehicle is a helicopter, the patient site is an accident site, and the patient site is a hospital. However, this feature is old and well known in the art, as evidenced by Schriewer's teachings with regards to wherein the vehicle is a helicopter, the patient site is an accident site, and the patient site is a hospital (Schriewer; page 1, paragraph 1). It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the system taught by Nathanson with Schriewer's teaching with regards to these limitations, with the motivation of "transporting critical-care patients or accident victims ... [where] ... time is of the essence" (Schriewer; page 1, paragraph 1, lines 5-6).

(C) Claim 10 repeats the features of claim 2 and is therefore rejected for the same reasons given above in the rejection of claim 2 and incorporated herein.

(D) Method claim 15 repeats the subject matter of system claim 2, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 2 has been shown to be fully disclosed by the teachings of Nathanson and Schriewer in the above rejection of claim 2, it is readily apparent that the system disclosed by the applied prior art performs the recited underlying functions. As such, these limitations are rejected for the same reasons given above for system claim 2, and incorporated herein.

(E) As per newly added claims 20-25, Nathanson and Schriewer teach a system and method as analyzed and discussed in claims 2 and 15 above

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wherein the determining whether the actual flight path varies from the calculated flight path includes identifying a variation from the calculated flight path (Nathanson; column 30, lines 10-21);

wherein the third module additionally comprises instructions for making information regarding the variation available to at least a fourth module (Nathanson; column 30, lines 10-21);

wherein the information regarding the variation comprises a reason for the variation (Nathanson; column 30, lines 10-21);

wherein the fourth module comprises instructions for calculating a bill at least in part based on the information regarding the variation (Nathanson; column 7, lines 24-27);

additionally comprising storing a reason for a variation between the actual flight path and the calculated flight path (Nathanson; column 30, lines 10-21); and

additionally comprising calculating a bill at least in part based on the variation (Nathanson; column 7, lines 24-27).

(F) As per newly added claims 26-28, Nathanson and Schriewer teach a system and method as analyzed and discussed in claim 2 above

wherein the instructions for tracking comprise instructions for automatically monitoring (reads on tracking) (Nathanson; column 4, lines 21-27), and wherein the actual flight path of the aircraft is stored data (reads on recorded) (Nathanson; column 4, lines 31-35);

wherein the instructions for tracking comprise instructions for recording the actual flight path of the aircraft (Nathanson; column 4, lines 21-35); and

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wherein the instructions for determining comprise instructions for calculating a deviation from the actual flight path (Nathanson; column 18, lines 8-27, column 19, lines 19-67, column 30, lines 10-21).

7. Claims 6-7, 11-12, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathanson et al. (5,122,959) and Schriewer (Schriewer, Scott, "Airborne Ambulance Saves Precious Time," Tulsa World, May 22, 1996, pages 1-2) as applied to claims 5, 10, and 15 above, and further in view of Hudson (Hudson, Terese, "Attorneys Fear Patient Transfer Claims in Malpractice Cases," Hospitals; Chicago; April 5, 1991, volume 65, issue 7, pages 44-48).

(A) As per claims 6-7, the combined system of Nathanson and Schriewer collectively fail to expressly teach wherein the first module comprises instructions for determining whether transportation of the patient from the patient site to another hospital is in compliance with interfacility transportation guidelines, wherein the guidelines are the Consolidated Reconciliation Act or the Omnibus Budget Reconciliation Act. However, this feature is old and well known in the art, as evidenced by Hudson's teachings with regards to determining whether transportation of the patient from the patient site to another hospital is in compliance with interfacility transportation guidelines, wherein the guidelines are the Consolidated Reconciliation Act or the Omnibus Budget Reconciliation Act (Hudson; abstract, page 1, last paragraph). It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the collective system taught by Nathanson and Schriewer with Hudson's teaching with regards to these limitations, with the motivation of avoiding malpractice suits (Hudson; Abstract).

(B) Claim 11-12 repeat the features of claims 6-7 and are therefore rejected for the same reasons given above in the rejection of claims 6-7 and incorporated herein.

(C) Method claims 16-17 repeat the subject matter of system claims 6-7, as a series of steps rather than a set of apparatus elements. As the underlying structure of claims 6-7 has been shown to be fully disclosed by the teachings of Nathanson, Schriewer, and Hudson in the above rejection of claims 6-7, it is readily apparent that the system disclosed by the applied prior art performs the recited underlying functions. As such, these limitations are rejected for the same reasons given above for system claims 6-7, and incorporated herein.

8. Claims 8, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathanson et al. (5,122,959) and Schriewer (Schriewer, Scott, "Airborne Ambulance Saves Precious Time," Tulsa World, May 22, 1996, pages 1-2) as applied to claims 2, 10, and 15 above and further in view of Matsumoto et al. (5,974,355).

(A) As per claim 8, the combined system of Nathanson and Schriewer collectively fail to expressly teach wherein the first module comprises instructions for storing crew work schedules for the emergency transport crew. However, this feature is old and well known in the art, as evidenced by Matsumoto's teachings with regards to storing crew work schedules for the emergency transport crew (Matsumoto; Abstract and column 12, lines 31-50). It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the

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invention was made, to expand the collective system taught by Nathanson and Schriewer with Matsumoto's teaching with regards to these limitations, with the motivation of facilitating an effective crew flight scheduling pattern (Matsumoto; Abstract).

(B) Claim 13 repeats the features of claim 8 and is therefore rejected for the same reasons given above in the rejection of claim 8 and incorporated herein.

(C) Method claim 18 repeats the subject matter of system claim 8, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 8 has been shown to be fully disclosed by the teachings of Nathanson, Schriewer, and Matsumoto in the above rejection of claim 8, it is readily apparent that the system disclosed by Nathanson, Schriewer, and Matsumoto include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claim 8, and incorporated herein.

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9. Claims 9, 14, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathanson et al. (5,122,959) and Schriewer (Schriewer, Scott, "Airborne Ambulance Saves Precious Time," Tulsa World, May 22, 1996, pages 1-2) as applied to claims 2, 10, and 15 above, and further in view of Yee et al. (6,044,323).

(A) As per claim 9, the combined system of Nathanson and Schriewer collectively fails to expressly teach wherein the third module comprises instructions for tracking the flight coordinates of the aircraft. However, this feature is old and well known in the art, as evidenced

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by Yee's teachings with regards to instructions for tracking the flight coordinates of the aircraft (Yee; Abstract, column 7, lines 42-50). It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the collective system taught by Nathanson and Schriewer with Yee's teaching with regards to these limitations, with the motivation of determining positional information of the aircraft and providing a "single integrated system which provides global coverage of all of the communication, navigation and surveillance functions required by an [air traffic control] ATC system" (Yee; Abstract, column 2, lines 17-20).

(B) Claim 14 repeats the features of claim 9 and is therefore rejected for the same reasons given above in the rejection of claim 9 and incorporated herein.

(C) Method claim 19 repeats the subject matter of system claim 9, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 9 has been shown to be fully disclosed by the teachings of Nathanson, Schriewer, and Yee in the above rejection of claim 9, it is readily apparent that the system disclosed by the applied prior art include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claim 9, and incorporated herein.

10. Newly added claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schriewer (Schriewer, Scott, "Airborne Ambulance Saves Precious Time," Tulsa World, May 22, 1996, pages 1-2) in view of Nathanson et al. (5,122,959).

(A) As per newly added claim 29, Schriewer teaches a computerized system for managing airborne transportation of a patient comprising

a first module comprising instructions for dispatching an aircraft carrying an airborne emergency transport crew to a patient site (Schriewer; page 1, paragraph 1).

Schriewer fails to explicitly disclose

a second module comprising instructions for generating a calculated flight path to the patient site; and

a third module comprising instructions for recording the actual flight path of the aircraft and calculating a variation from the actual flight path.

However, the above features are well-known in the art, as evidenced by Nathanson.

In particular, Nathanson teaches

a second module comprising instructions for generating a calculated flight path to the patient site (Nathanson; column 18, lines 8-28); and

a third module comprising instructions for recording the actual flight path of the aircraft and calculating a variation from the actual flight path (Nathanson; column 19, line 43 to column 20, line 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Schriewer to include a second module comprising instructions for generating a calculated flight path to the patient site and a third module comprising instructions for recording the actual flight path of the aircraft and calculating a variation from the actual flight path., as taught by Nathanson, with the motivations of providing an integrated

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vehicle dispatch system that performs the management, coordination and communications functions for dispatching vehicles, providing a pricing program, such that all the prices can be automatically generated for each transaction, and providing the user of the program with a snapshot of key operational statistics for a given period of time (Nathanson; column 2, lines 50-53, column 3, lines 41-48).

Affidavit

11. Applicant has submitted an Affidavit filed 20 December 2004 to remove Aeromed ([http:// www.aeromed-software.com](http://www.aeromed-software.com),) as a reference applied under 35 U.S.C. § 102(a) in the previous Office Actions (paper numbers 7 and 9).

The affidavit includes sections of a copy of a manuscript describing the capabilities of the system (Exhibit Sheets A1, A2, and A3), with portions of A1 and A3 redacted, three figures from the same manuscript (Exhibit Sheets B1, B2, and B3), a copy of a section of a document, entitled "Vision" (Exhibit Sheet C), a portion of which has been redacted, a copy of a section of a document, entitled "Operational Uses" (Exhibit Sheet D), a portion of which has been redacted, and drafts of figures used in prior patent applications (Exhibit Sheets E1, E2, and E3), portion of which have been redacted.

At page 1, paragraph 4.a. of the affidavit, the Applicant states that the subject matter set forth in claims 2 and 9 was conceived of no later than February 5, 1998. Further, at page 5, paragraph 5, of the affidavit, the Applicant states that the elements of claims 2 and 9 "were clearly conceived prior to February 5, 1998, and either actually reduced to practice or was undergoing due diligence to reduce to practice prior to February 5, 1998," (emphasis added).

The Affidavit filed on 20 December 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Aeromed reference for the following reasons:

(A) According to MPEP § 715.04, in general, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose.

It is respectfully submitted that it is unclear what invention was reduced to practice no later than February 5, 1998, in light of the fact that Exhibit D includes predictive language such as "...we could possibly reduce fuel expense ..." (paragraph 4) and "[o]ther potential uses" (paragraph 1). As stated above, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose. The Exhibit sheets fail to show that the apparatus actually existed and worked for its intended purpose. It appears, according to the Exhibit sheets that the invention had been conceived on paper at an undisclosed date, and that the Applicant appears to have determined what the functions of the product *would be* in the future. However, it is not clear from the Exhibit sheets what was reduced to practice no later than February 5, 1998.

Applicant's reliance on the affidavit filed 20 December 2004, including Exhibit Sheets A1, A2, and A3, B1, B2, and B3, C, D, E1, E2, and E3, to show actual reduction to practice is non-persuasive for the reasons given above. Therefore, constructive reduction to practice is the filing date of the application, 12 September 2000, and reduction to practice has not been shown to be earlier than 12 September 2000.

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(B) Further, even if the invention was conceived prior to February 5, 1998, the Applicant would need to show due diligence from the date of conception to the date of filing, 12 September 2000. An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966). (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading). A 2-day period lacking activity has been held to be fatal. *In re Mulder*, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); *Fitzgerald v. Arbib*, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period. Efforts to exploit an invention commercially do not constitute diligence in reducing it to practice. An actual reduction to practice in the case of a design for a three-dimensional article requires that it should be embodied in some structure other than a mere drawing.); *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) (Diligence requires that applicants must be specific as to dates and facts.). (MPEP 2138.06). Examiner respectfully notes that none of the Exhibit sheets are dated.

Moreover, Examiner respectfully notes that Applicant's statement at page 5, paragraph 5, of the affidavit filed 20 December 2004 stating that the elements of claims 2 and 9 "were clearly conceived prior to February 5, 1998, and either actually reduced to practice or was undergoing due diligence to reduce to practice prior to February 5, 1998," (emphasis added) makes it unclear as to which of these two conditions apply, and unclear as to what was actually reduced to practice and what was undergoing due diligence.

However, if the Applicant properly shows actual reduction to practice occurred no later than February 5, 1998 based on MPEP § 715.02, MPEP § 715.04, and the discussion above, the requirement to show due diligence will be removed.

Response to Amendment

12. Applicant's arguments filed 20 December 2004, 25 January 2005 and 10 February 2005 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the responses filed 20 December 2004, and 10 February 2005.

(A) At pages 6-7 of the 20 December 2004 response, Applicant discusses the Affidavit submitted under 37 CFR 1.131 to overcome the Aeromed reference. Applicant's Affidavit has been discussed in Section 11 of this Office action.

(B) At pages 7-9 of the 20 December 2004 response, Applicant argues that the limitations of claims 2-19 and newly added claims 20-26 in the 20 December 2004 amendment are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes are missing in the applied references have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the combined teachings of Aeromed, Nathanson, Schriewer, Hudson, Matsumoto, and Yee, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in

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the 35 USC § 102 and 35 USC § 103 rejections given in the preceding sections of the present Office Action and in the prior Office Action (paper number 9), and incorporated herein. In particular, Examiner notes that the features of instructions for determining whether the actual flight path varies from the calculated flight path are taught by the cited references. In particular, please note (Nathanson; column 30, lines 10-21) as specifically applied in the rejections given above and incorporated herein. Please note that Examiner interprets Nathanson's teachings of

“The on-board vehicle hardware may include an automated vehicle locator system based on the LORAN "C" coordinate navigation system. The LORAN transceiver signals the approximate real time vehicle position to the dispatch work station via a digital radio, automatically updating the actual position of the vehicles on the graphic display monitor. The vehicle information is displayed in the form of coordinate maps of the service areas. The maps display icon-based indicators of vehicle locations and downstream itineraries, pick-up and delivery locations, service zones and highlighted displays of vehicle routes” (Nathanson; column 4, lines 1-12); together with

“[t]he interruption indicates that a vehicle's current itinerary has been revised by a stop insertion and that the vehicle's immediate destination has to be rerouted” (Nathanson; column 30, lines 10-21)

as teaching these limitations.

(C) At page 5 of the 10 February 2005 response, Applicant argues that the limitations of claims 2-29 and including claims 26-29 newly added in the 10 February 2005 amendment are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes are missing in the applied references have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the combined teachings of

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Aeromed, Nathanson, Schriewer, Hudson, Matsumoto, and Yee, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the 35 USC § 102 and 35 USC § 103 rejections given in the preceding sections of the present Office Action and in the prior Office Action (paper number 9), and incorporated herein. In particular, Examiner notes that the features of recording of an actual flight path are taught by the cited references. In particular, please note (Nathanson; column 30, lines 10-21) as specifically applied in the rejections given above and incorporated herein. Please note that Examiner interprets Nathanson's teachings of "[t]his program controls the flow of communication between the dispatcher and the drivers in a mobile environment. This program performs the function of receiving and storing all data transmissions originating from multiple dispatcher workstations and communicating the transmissions with multiple vehicles" (emphasis added) (Nathanson; column 4, lines 31-35) as teaching recording of an actual vehicle path.

Moreover, the Examiner respectfully submits that Applicant is not the first to invent recording of an actual flight path as described above. The use of recording of an actual flight path as described above was well established in the prior art, (see, for example Hegershoff, U.S. Patent Number 1, 873, 126), and the courts have held that even if a patent does not specifically disclose a particular element, said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention. *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

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With regards to Applicant's argument on page 5 of the 10 February 2005 response that the applied art fails to disclose calculating a deviation from the actual flight path, this feature has been discussed earlier in this Office Action.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied references, Olsen et al., U.S. Patent Number 4, 814, 711, Halavais, U.S. Patent Number 4, 819, 053, McLaughlin et al, U.S. Patent Number 2, 977, 177, and Hegershoff, U.S. Patent Number 1, 873, 126 teach the environment of tracking positional information and recording flight paths of aircraft in flight.

14. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to: **(703) 305-7687.**

For informal or draft communications, please label "PROPOSED" or "DRAFT" on the front page of the communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

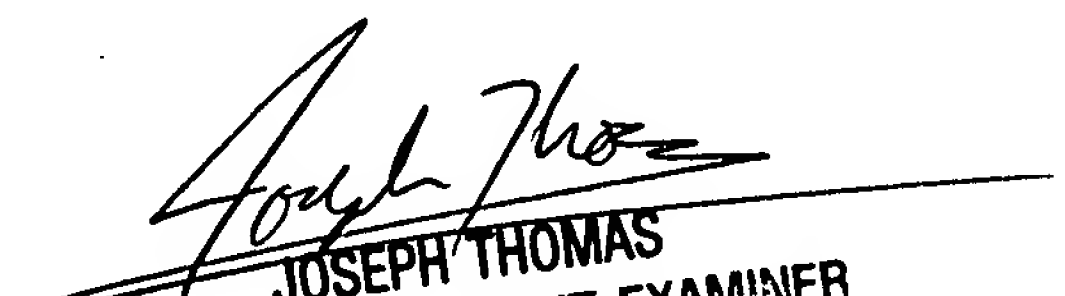
16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (571) 272-3600.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

June 8, 2005



JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600